

## Office of Personnel Management

## § 536.402

basic pay payable for the grade of the employee's position of record; or

(3) A continued rate of pay under 5 CFR part 531, subpart C or G (as contained in the January 1, 2005, edition of title 5, Code of Federal Regulations, parts 1 to 699) which was greater than the maximum rate of basic pay payable for the grade of the employee's position.

(c) The conversion rules in this section must be applied before any simultaneous pay action that takes effect on May 1, 2005.

### § 536.310 Exceptions for certain employees in nonforeign areas.

(a) Notwithstanding §§ 536.304(b)(3) and 536.306(a), an employee who is receiving a retained rate in excess of Executive Schedule level IV on January 1, 2012, consistent with the Non-Foreign Retirement Equity Assurance Act of 2009 (subtitle B of title XIX of Pub. L. 111-84), may continue to receive a retained rate higher than Executive Schedule level IV until—

(1) The retained rate becomes equal to or falls below Executive Schedule level IV; or

(2) The employee ceases to be entitled to pay retention under § 536.308.

(b) Notwithstanding 5 U.S.C. 5361(1) and § 536.102(b)(2), an employee who is employed on a temporary or term basis is not barred from receiving a retained rate if such employee—

(1) Is receiving a special rate above Executive Schedule level IV on January 1, 2012, and is covered by paragraph (a) of this section; or

(2) Is receiving a special rate incorporating an additional adjustment under section 1915(b)(1) of the Non-Foreign Retirement Equity Assurance Act (subtitle B of title XIX of Pub. L. 111-84) at the time the employee's special rate schedule is reduced or terminated.

[76 FR 68634, Nov. 7, 2011]

## Subpart D—Appeals and Miscellaneous Provisions

SOURCE: 45 FR 85656, Dec. 30, 1980, unless otherwise noted. Redesignated at 70 FR 31310, May 31, 2005.

### § 536.401 Placement and classification plans.

(a) Agencies which employ individuals subject to this part are required to establish in writing placement and classification plans.

(b) The placement and classification plans must commit the agency to:

(1) Identify and correct classification errors; and

(2) Correct position management problems; and

(3) Carry out specific planned efforts to place employees subject to this part; and

(4) Pursue placement efforts that do not adversely affect affirmative action goals.

[45 FR 85656, Dec. 30, 1980. Redesignated at 70 FR 31310, May 31, 2005.]

### § 536.402 Appeal of termination of benefits because of reasonable offer.

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel Management not later than 20 calendar days after being notified that his or her grade or pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed